IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/09/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CIVIL REVISION PETITION No.1985 OF 1998

Hotel Blue Star through its
partners
1.S.Nambinarayanan
2.S.Sankaranarayanan Reddiar ... Petitioners

-Vs-

1.S.Raman Reddiar
2.P.Jayapal ... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure for the reliefs as stated therein.

For petitioners : Mr.N.Subbarayalu

For respondents : Mr.K.Srinivasan

:O R D E R

This Civil Revision Petition is filed against the order dated 26.8.1997 made in I.A.No.1091 of 1996 in O.S.No.771 of 1993 by the Court of Principal District Munsif, Tirunelveli thereby dismissing the said petition filed by the petitioners, who are the defendants to the suit to scrap the Commissioner's report already filed by the AdvocateCommissioner and appoint a new Commission to measure the property with the help of a qualified Surveyor and the District Surveyor and to submit a report.

2. Today, when the above matter was taken up for consideration in the presence of the learned counsel for both, it comes to be known that the suit is one filed by the respondents herein praying for permanent injunction restraining the defendants from putting up any further construction in the Schedule II of the suit properties.

3. While so, the defendants have filed an application earlier for the appointment of a Commission to inspect the suit locality, to measure the same with the help of a qualified Surveyor and to submit a report and the said petition having been allowed, the learned Commissioner appointed by the Court had paid visit to the spot thrice with the help of both the parties and

has measured the same and since water was stagnated in a portion of the property, with very many oddities, the Commissioner has complied with the requirements of the warrant and has submitted his report and it is this report filed by the Commissioner, the petitioners/defendants have come forward to pray to scrap and to appoint a new Commission replacing the present Commissioner.

4. The lower Court having framed its own point for consideration and having traced the pleadings of the petition and the counter and having its own discussions on the point framed, has ultimately arrived at the conclusion to dismiss the I.A. seeking a fresh Commission and report.

5. Today, the learned counsel appearing on behalf of the petitioners would point out certain irregularities which are said to have occurred in the earlier commission report stating that in spite of there being water stagnated on the Western side, the measurement was undertaken and it was not measured properly; that in spite of having measured the property on three occasions, they have not been properly given in the sketch to the facts on ground; that they issued two memos. to the Commissioner seeking clarification regarding the measurements and the difference in measurement, but still, they have not been pointed out in his report; that the Inspector of Surveys did not act in a justifiable manner etc. But, these allegations would be vehemently denied by the other side in their counter stating that not only the Commission was appointed by the Court in I.A.No.1196 of 1993 but also a very senior survey officer of the rank of Assistant Director of Surveys was appointed with the consent of both the parties and the Commissioner inspected the spot on three occasions on 4.12.1993, 11.12.1993 and 22.1.1994 and both the parties freely pointed out what they wanted the Commissioner to do and with very great difficulties, the Commissioner was able to see the locality in spite of many oddities and noted down the physical features and measured the property as warranted by the Court; that the petitioners intending to cause obstruction to the report filed by the Commissioner and to drag on the proceeding with mala fide intentions have come forward to file the above application to scrap the Commissioner's report and to appoint a new Commission and would pray to dismiss the application.

6. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioners and the respondents as well, the trial Court having gone into the facts and assessing the situation and having framed its own point for consideration and appreciating the materials placed on record particularly the earlier report of the Commissioner and the manner in which the report has been prepared by the Commissioner as per the report dated 9.3.1994 and would cite a judgment of a single Judge of this Court reported in AIR 1995 Madras 274 (GOPALAKRISHNAN V. P. SHANMUGAM) wherein it is held that unless the Court arrived at the conclusion that the earlier report was erroneous and set aside the same, the question of appointment of a new Commission or filing of a new report did not arise and would ultimately dismiss the application.

7. This Court is not able to find any tangible reason existing in favour of the petitioners seeking the appointment of a new Commission scrapping the report already submitted by the Commissioner

appointed by the Court. Moreover, appointment of a Commission, though often times are initiated by one of the parties or by both, still, it is only for the purpose of the Court to find out the truth more clearly and in full and based on the report filed, the Court should arrive at the conclusion in consideration of the other available materials placed on record and in the said process, if the Court is satisfied with the Commissioner's report, just for the simple reason that they are not satisfied with the Commissioner's report, the petitioners could not seek for a fresh commission or scrapping the earlier report, which is undesirable and cannot be sustained.

8. This Court is not able to find any legal infirmity or inconsistency or any error apparent on the face of the order passed by the lower Court so as to cause its interference into the well considered and merited order passed by the lower Court and the only conclusion that this Court, in these circumstances, could arrive at, is to dismiss the above civil revision petition since the same is not on merit and hence the following order:

In result,

(i) the above civil revision petition does not merit acceptance and the same is dismissed as such.

(ii)The order dated 26.8.1997 made in I.A.No.1091 of 1996 in O.S.No.7 71 of 1993 by the Court of Principal District Munsif, Tirunelveli is hereby confirmed.

(iii)Since it is a long pending matter, the trial Court is further directed to deal with the suit in O.S.No.771 of 1993 taking up the same out of turn and bringing on the priority list and conducting the trial as expeditiously as possible so as to deliver the judgment on merits and in accordance with law within six months from the date of receipt of a copy of this order.

However, in the circumstances of the case, there shall be no order as to costs.

Index: Yes

Internet: Yes

Rao

To

The Principal District Munsif,
Tirunelveli.

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